

OLD LANGUAGE – ~~Struck Out~~

NEW LANGUAGE – Double Underlined

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 2,
DIVISION 33, OF THE SAN DIEGO MUNICIPAL CODE
BY AMENDING SECTIONS 22.3302, 22.3303, 22.3304,
22.3305, 22.3306, 22.3308, AND 22.3309; AND ADDING
SECTION 22.3310; ALL RELATING TO DESIGN-BUILD
CONTRACTS.

Division 33: Design-Build Contracts

§22.3301 Purpose and Intent

[No change in text.]

§22.3302 Definitions

All defined terms in this Division appear in italics. For the purposes of this
Division, the following definitions apply:

~~“Design-Build”~~ *Design-build* means a public works contract procurement method
in which both the design and construction of a project are procured from a single
entity.

~~“Design-Build Entity”~~ *Design-build entity* means a partnership, corporation, or
other legal entity that is able to provide appropriately licensed contracting,
architectural, and engineering services ~~as needed~~ on a public works project.

~~“Design-Build Entity Member”~~ *Design-build entity member* includes any person
who provides licensed contracting, architectural, or engineering services.

§22.3303 Design-Build Procurement

- (a) For purposes of this Division only, prior to procuring a ~~Design-Build~~ ~~public works contract~~ *design-build public works contract*, the City shall prepare a request for proposal or invitation to bid setting forth the scope of the project that may include, but is not limited to, the size, type, and desired design character of the buildings and site, and performance specifications. The performance specifications shall describe the quality of construction materials, assemblies, and other information deemed necessary to adequately describe the City's needs. The performance specifications shall be prepared by a design professional designated by the City. Nothing in this Division precludes a *design-build* contract from being awarded without competition pursuant to Section 22.3108.
- (b) Any architectural firms, engineering firms, specialty consultants, or individuals retained by the City to assist in the development of criteria or preparation of the request for proposals or invitation to bid shall not be eligible to participate in the competition with any *design-build entity*.

§22.3304 Competitive Prequalification and Selection Process

The City may issue a request for qualifications to establish a competitive prequalification and selection process to determine which ~~Design-Build Entities~~ *design-build entities* are the most qualified and eligible to respond to a request for *design-build* proposals or invitation to bid. ~~that specifies the prequalification criteria, as well as recommends the manner in which the winning entity will be selected. Nothing in this Division precludes a Design-Build contract from being awarded to a *Sole Source*, if, in advance of the contract, the City Manager certifies in writing the Sole Source status of the provider.~~

§22.3305 Prequalification Criteria

~~Prequalification~~ The City may be limited to consideration of all or any combination of the following criteria ~~supplied by a Design-Build Entity in~~ prequalifying design-build entities:

- (a) Possession of all required licenses, registration, and credentials in good standing that are required to design and construct the project.
- (b) Submission of documentation establishing that the ~~Design-Build Entity member~~ design-build entity members have completed, or demonstrated the capability to complete, projects of similar size, scope, building type, or complexity, and that proposed key personnel have sufficient experience and training to competently manage and complete the design and construction of the project.
- (c) Submission of a proposed project management plan establishing that the ~~Design-Build Entity~~ design-build entity has the experience, competence, and capacity needed to effectively complete the project.
- (d) Submission of evidence establishing that the ~~Design-Build Entity~~ design-build entity has the capacity to obtain all required payment and performance bonding, liability insurance, and errors and omissions insurance, as well as a financial statement assuring the City that the ~~Design-Build Entity~~ design-build entity has the capacity to complete the project.
- (e) Provision of a declaration that the applying members of the ~~Design-Build Entity~~ design-build entity have not had a surety company finish work on any project within the past five years.

- (f) Provision of a declaration providing detail for the past five years concerning all of the following:
- (1) Civil or criminal violations of the Occupational Safety and Health Act against any member of the ~~Design-Build Entity~~ design-build entity.
 - (2) Civil or criminal violations of the Contractors' State License Law against any member of the ~~Design-Build Entity~~ design-build entity.
 - (3) Any conviction of any member of the ~~Design-Build Entity~~ design-build entity of submitting a false or fraudulent claim to a public agency.
 - (4) Civil or criminal violations of federal or state law governing the payment of wages, benefits, or personal income tax withholding, or of Federal Insurance Contributions Act (FICA) withholding requirements, state disability insurance withholding, or unemployment insurance payment requirements against any member of the ~~Design-Build Entity~~ design-build entity. For purposes of Section 22.3305(f)(4), only violations by a ~~Design-Build Entity Member~~ design-build entity member, as an employer shall be deemed applicable, unless it is shown that the ~~Design-Build Entity Member~~ design-build entity member, in his or her capacity as an employer, had knowledge of a subcontractor's violations or failed to comply with the conditions set forth in Section 1775(b) of the ~~State~~ California Labor Code.

(5) Civil or criminal violations of federal or state law against any ~~Design Build Entity Member~~ design-build entity member governing equal opportunity employment, contracting, or subcontracting.

(g) Provision of a declaration that the ~~Design Build Entity~~ design-build entity will comply with all other provisions of law applicable to the project. The declaration shall state that reasonable diligence has been used in its preparation and that it is true and complete to the best of the signer's knowledge.

§22.3306 ~~Documentation of~~ **Equal Employment Opportunity Outreach Program**

~~The Design Build Entities shall provide documentation of its subcontractor and employment outreach program to all subcontractors in the required disciplines of the project. Design-build entities are "contractors" within the meaning of Chapter 2, Article 2, Division 27 of this Code, and shall comply with the City's equal employment opportunity outreach program and any related requirements in the design-build contract. shall provide documentation~~

§22.3307 **False Declaration Unlawful**

[No change in text.]

§22.3308 **Selection Method**

The City shall select one of the following methods as the process to be used for the selection of the winning entity:

- (a) ~~A Design-Build~~ design-build competition where award is made to the
design-build entity whose proposal offers the best value to the City
considering price and the evaluation criteria in the request for proposals.
- (1) The City shall issue a request for proposals describing the project
and any based on performance requirements and ; specifications;
and criteria set forth by the City in the request for proposals.
deems necessary. The City may include preliminary designs and
drawings detailing the requirements of the project.
- (+ 2) The request for proposals shall establish evaluation criteria and a
methodology that the City will use to evaluate proposals. Criteria
used in this form of evaluation of proposals may include, but are
not be limited to, items such as the experience of the design-build
entity and key personnel, references, commitment to equal
opportunity, proposed design approach, project cost, initial and/or
life-cycle costs, project features, financing, quality, capacity,
schedule, and operational and functional performance of the
facility. However, any criteria and methods used to evaluate
proposals shall be limited to those contained in the request for
Design-Build design-build proposals.
- (2) ~~Any architectural firms, engineering firms, specialty consultants,~~
~~or individuals retained by the City to assist in the development of~~
~~criteria or preparation of the request for proposals shall not be~~
~~eligible to participate in the competition with any Design-Build~~
~~Entity.~~

- (3) — ~~Award shall be made to the Design-Build Entity whose proposal is judged as providing best value meeting the interests of the City and meeting the objectives of the project.~~
- (b) — ~~A Design-Build competition based on program requirements, performance specifications, and a preliminary design or combination thereof set forth by the City in the request for proposals. Limited drawings and specifications detailing the requirements of the project may accompany the request for proposals.~~
- (1) — ~~The City shall establish technical criteria and methodology, including price, to evaluate proposals and shall describe the criteria and methodology of evaluation and selection in the request for Design-Build proposals.~~
- (2) — ~~Any architectural firms, engineering firms, specialty consultants, or individuals retained by the City to assist in the preparation of the preliminary design or request for proposals shall not be eligible to participate in the competition with any Design-Build Entity.~~
- (3) — ~~Award shall be made to the Design-Build Entity on the basis of the technical criteria and methodology, including price, whose proposal is judged as providing best value in meeting the interests of the City and meeting the objectives of the project.~~
- (e b) A Design-Build design-build competition based on program requirements and a detailed scope of work, including any preliminary design drawings and specifications set forth by the City in the request for proposals invitation to bid.

(1) ~~Any architectural firms, engineering firms, specialty consultants, or individuals retained by the City to assist in the preparation of the preliminary design or request for proposals shall not be eligible to participate in the competition with any Design-Build Entity.~~

(2) —Award shall be made on the basis of the lowest responsible and reliable bid.

(d-c) ~~A “Sole Source” award or otherwise allowed by law~~ An emergency or sole source award of a *design-build* contract without competition pursuant to Section 22.3108.

§22.3309 Work Listing

The City recognizes that the ~~Design-Build Entity~~ *design-build entity* is charged with performing both design and construction. Because a ~~Design-Build~~ *design-build* contract may be awarded prior to the completion of the design, it is often impracticable for the ~~Design-Build Entity~~ *design-build entity* to list all subcontractors at the time of the award.

(a) It is the intent of the City to establish a clear process for the selection and award of subcontracts entered into pursuant to this Division in a manner that retains protection for subcontractors while ~~enabling Design-Build~~ allowing *design-build* projects to be administered in an efficient fashion.

(b) All of the following requirements shall apply to subcontractors, licensed by the state, that are employed on ~~Design-Build~~ *design-build* projects undertaken pursuant to this Division.

- (1) The ~~Design-Build Entity~~ design-build entity in each ~~Design-Build~~ design-build proposal shall specify the construction trades or types of subcontractors that may be named as members of the ~~Design-Build Entity~~ design-build entity at the time of award. In selecting the trades that may be identified as members of the ~~Design-Build Entity~~, design-build entity, the ~~Design-Build Entity~~ design-build entity shall identify the trades deemed essential in the design considerations of the project. All subcontractors that are listed at the time of award shall be afforded the protection of all applicable laws.
- (2) All subcontracts that were not listed by the ~~Design-Build Entity~~ design-build entity at the time of award in accordance with Section 22.3309(b)(1) shall be performed and awarded by the ~~Design-Build Entity~~ design-build entity, in accordance with a bidding process set forth in the request for ~~Design-Build~~ design-build package proposals.

§22.3310 Multiple Award Design-Build Contracts

The City may award design-build contracts to more than one design-build entity in which the design-build entities compete for public works projects on a task order basis, under the following conditions:

- (a) The City issues a request for qualifications or proposals generally describing the types of public works projects anticipated to be performed under the multiple award design-build contracts, and the

evaluation criteria to be used to determine which *design-build* entities will be awarded contracts.

(b) The City Council approves the award of the multiple award *design-build* contracts.

(c) Only the *design-build* entities awarded multiple award *design-build* contracts are eligible to compete for the public works projects submitted to them by the City, with the winning *design-build* entity determined in accordance with Section 22.3308. The winning *design-build* entity is awarded the public works project through the issuance of a *task order*.

(d) Multiple award *design-build* contracts shall provide for a period of up to three years of competition for task orders. The contracts may continue for a period longer than three years only as necessary to complete outstanding *task orders*.

(e) No contract may guarantee a *design-build* entity cumulative *task orders* in excess of \$50,000.

(f) A *task order* may not exceed \$10,000,000 without City Council approval.

(g) The cumulative amount of *task orders* issued to all *design-build* entities awarded contracts through each request for qualifications or proposals may not exceed \$100,000,000 without City Council approval.

(h) Every request for proposals for a *task order* that the City estimates to cost over \$1,000,000 shall include mandatory minimum

participation by Small Local Business Enterprises and/or Emerging Local Business Enterprises, as defined in Section 22.3603, at a level determined by the City Manager for each project. The City Manager may also include mandatory minimum participation levels for Disabled Veteran Business Enterprises, and on *task orders* that the City estimates to cost \$1,000,000 or less, in his or her discretion.

(1) Notwithstanding Sections 22.3609 and 22.3610, good faith efforts shall not satisfy the mandatory minimum participation required by this Section.

(2) Any *design-build entity* awarded a *task order* who fails to achieve the required mandatory minimum participation level in the request for proposals shall be ineligible to compete for further *task orders* under that multiple award *design-build contract*.

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